

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7966 of 1997

WITH

SPECIAL CIVIL APPLICATION NO.782 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SHANTILAL NATHALAL DARJI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

SCA 7966/97:

MR HK RATHOD for the Petitioner.

MR YS LAKHANI for the Respondent.

SCA 782/98:

MR YS Lakhani for the petitioner.

MR HK Rathod for the respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/02/98

ORAL JUDGEMENT

Rule. Mr. H.K.Rathod in SCA 782/98 and Mr.

Y.S.Lakhani in SCA 7966/97 waive service of the Rule. At the request of the learned Advocates, these petitions are taken up for final hearing to-day.

Shantilal Nathalal Darji, the concerned workman, at the relevant time was serving as a conductor with the Corporation. It appears that he had remained absent without leave with effect from 1-5-93 and had not resumed the services even though he was asked to resume duties and, therefore, on 9-6-93 a chargesheet was issued against him and thereafter a departmental inquiry was held. The services of the concerned workman came to an end by the order of dismissal dated 25th August, 1993. The concerned workman had, therefore, moved the Labour Court by way of Reference. The Labour Court, Ahmedabad, after considering the facts and circumstances of the case reinstated the workman without back wages vide its award dated 27-2-97. Therefore the workman has challenged that part of the award by which he has not been awarded backwages and the Corporation has challenged the award of reinstatement.

Having seen the reasoning of the Labour Court, I am of the view that no interference is called for as in my view no case is made out for the interference while exercising powers under Article 227 of the Constitution. This is in view of the fact that the concerned workman has put in 22 years of service and he is not involved in any serious misconduct. It is the case of the concerned workman that because he was suffering from paralytic he could not remain present on duty for a period of four months and, therefore, he as well could not remain present at the inquiry and the inquiry proceeded ex-parte. These are some of the facts which, in my view, are required to be taken into consideration while confirming the order passed by the Labour Court. In view of the fact that the petitioner is suffering from paralytic, it would not be in fitness of things to direct the Corporation to reinstate him on his original post of Conductor as per the award of the Labour Court. It is for this reason that Mr. Rathod appearing for the workman has agreed that the concerned workman may be reinstated in service on the post of Peon with continuity of service, as if his services were never terminated and that the concerned workman is prepared to give up his claim for backwages for the period for which he remained absent. However, he has left the question of back wages to this Court. This is particularly in view of the fact that the Corporation, in compliance with the award of the Labour Court had, in fact, offered reinstatement to the workmen from 1st September, 1997. However, as the

workman has become handicap, he could not join the services. For this purpose Mr. Rathod has placed reliance on the decision given by this Court in a similar situation in Special Civil Application No. 1008/97 decided on 28-7-97 wherein the services of the petitioner in that case were terminated by the Corporation on the ground of his being unfit to discharge the duties of conductor on account of paralytic attack and submitted that the Corporation may be directed to reinstate the workman and adjust him in the services of the Corporation as a Peon and to recategorise him in the pay scale of Peon with continuity of service as if his services were not terminated. In view of the fact that the workman is suffering from paralytic attack, it is just and fit that instead of reinstating the workman on his original post of Conductor the Corporation is directed to reinstate him and adjust him on the post of Peon.

In the result, while confirming the award of the Labour Court, in view of the fact that the workman has become handicap because of the paralytic attack, the same is modified and it is directed that the workman shall be reinstated and adjusted on the post of Peon and recategorised in the pay scale of Peon with continuity of service as if his services were not terminated for reinstatement and he will be deemed to have been reinstated from 1-1-1998, if he is found medically fit. In view of this, as observed by this Court in SCA No. 1008/97, it is hereby ordered that the concerned workman be sent for medical examination to the Corporation's Doctor and both the parties shall abide by the certificate that may be given by the Corporation's Doctor on the question of the fitness of the workman for the post of peon. If the doctor issues certificate, in favour of the workman stating that he is fit to discharge duties as Peon, in that event the Corporation shall offer him the post of Peon and pay him the salary of Peon with effect from 1-1-98. This exercise of examining the concerned workman shall be over within a period of four weeks from today.

Subject to the directions aforesaid, Rule in both the petitions is discharged with no order as to costs.

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